

REMARKS

This Amendment is responsive to the Office Action dated March 11, 2009. Applicant has amended claims 24, 40, 41, 46-51, 55 and 56 and canceled claims 38, 39 and 83-99. Claims 24-37 and 40-56 are pending with claim 44 withdrawn from consideration.

Allowable Subject Matter

The Office Action indicated that claim 39 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 39 depended from claim 38, and claim 38 depended directly from independent claim 24. Applicant has amended independent claim 24 to include the subject matter of claims 38 and 39 and canceled claims 38 and 39. Claims 25-37 and 40-47 are dependent on claim 24. Therefore, Applicant respectfully submits that claims 24-37 and 40-47 are in condition for allowance.

Claim Objections

The Office Action objected to claims 86 and 97. Applicant has canceled claims 86 and 97, rendering these objections moot.

Claim Rejections Under 35 U.S.C. §§ 102 and 103

The Office Action rejected:

Claims 24-26, 30, 33, 35, 38, 41, 43, 45, 48 and 49 under 35 U.S.C. § 102(a) and §102(e) as being anticipated by Florio (US 2004/0002742);

Claims 27, 29 and 31 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann et al. (US 2005/0085738, herein referred to as “Stahmann ‘738”);

Claims 28, 33 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Auphan (US 2005/0143617);

Claim 32 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann et al. (US 2005/0038745, herein referred to as “Stahmann ‘745”) and Lee et al. (US 2005/0065560, herein referred to as “Lee ‘560”);

Claims 36 and 53 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann ‘738 and further in view of Sun et al. (US 6,273,856, herein referred to as “Sun”);

Claims 37, 51, 52 and 54 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann '738;

Claims 40, 42, 50 and 55 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Lee et al. (US 2004/0199217, herein referred to as "Lee '217");

Claims 46 and 47 under 35 U.S.C. § 103(a) as being unpatentable over Florio further in view of Lee et al. (US 2005/0061320, herein referred to as "Lee '320");

Claim 56 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann '738 and further in view of Lee '320;

Claims 83-85, 89, 91, 93, 94 and 96-98 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann '738;

Claims 83-85, 89, 92-94 and 96-98 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann '738 and further in view of Auphan;

Claim 86 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann '738 and further in view of Suzuki et al. (US 2001/0049471, herein referred to as "Suzuki");

Claim 87 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann '738 and further in view of Burnes et al. (US 2004/0215269, herein referred to as "Burnes");

Claim 90 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann '738 and further in view of Stahmann et al. (US 2005/0080463, herein referred to as "Stahmann '463"); and

Claim 95 under 35 U.S.C. § 103(a) as being unpatentable over Florio in view of Stahmann '738, as applied to claims 83-85, 89, 91, 93, 94 and 96-98 below and further in view of Sun et al. (US 6,273,856).

Applicant respectfully traverses the rejections to the extent such rejection may be considered applicable to the amended claims. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Independent Claim 24

In order to expedite allowance of this Application, Applicant has amended claim 24 to include subject matter that the Examiner has indicated is allowable. Accordingly, Applicant respectfully suggests that the rejections of claims 24-37 and 40-47 are rendered moot. Applicant reserves the right to pursue any canceled claims and non-canceled claims as previously presented in future submissions or one or more continuation applications.

Independent Claims 48 and 51

In order to expedite allowance of this Application, Applicant has amended claims 48 and 51 to recite means for determining and an implantable medical device that determines a representative value of the sleep quality metric for each of the plurality of therapy parameter sets based on the values of the sleep quality metric associated with the therapy parameter set, wherein the representative value for each therapy parameter set comprises one of a mean value and a median value, respectively. As amended, independent claims 48 and 51 include subject matter that the Examiner has indicated is allowable with respect to claim 39. Claims 49 and 50 depend upon independent claim 48, and claims 52-56 depend upon independent claim 51. Therefore, Applicant submits that claims 48-56 are in condition for allowance.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

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